No. 54.

Sup. Ct. of Hill v. Hinsdale

SUPREME COURT OF THE UNITED STATES.

Filed Mar. 1, 1897

OCTOBER TERM, 1895.

No. ~~699~~. 54

PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS, *et al.*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

Supplemental Brief of Appellant.

The North Carolina statute imposing a tax of twenty-five cents a ton on every ton of fertilizer imported into, or sold in, the state is not upon its face an inspection law. *It does not require the agricultural department to make a single inspection or a single analysis of fertilizer during the whole year.* Whenever the said department chooses to institute condemnation proceedings, (see The Code, § 2192, first brief p. 3), an analysis is provided for, and when there is a condemnation adjudged, "it shall be the duty of the department to have an analysis made," etc. As there are not half a dozen condemnation suits in a year, the few hundred dollars expense involved in the inspection and analyses in these cases will not exhaust the $30,000 to $50,000 annually realized from the tonnage revenue tax.

The only other section of The Code (2196), which provides for the analysis of fertilizers, confines the duties of the chemist to the analysis of such fertilizers and products as may be

required by the department of agriculture. Under this section it is not necessary to make any analysis, unless the department shall require it. The department may not require it at all. The act therefore does not contain the elements of an inspection law, because the duty to inspect should be imperative. This section, too, is part of the original act in which there is no reference whatever to the subject of inspection. When the original act was adopted, the fertilizer tax contained therein was a privilege tax of five hundred dollars, which was declared to be unconstitutional in *Fertilizer Co.* v. *Board of Agriculture*, 43 Fed. Rep., 609. This continued to be the case until the tonnage tax of twenty five cents was substituted by the act of 1891. (Code, section 2190; Acts of 1891, chapter 9, section 1.) Under it, the only prerequisites to a sale are the payment of the twenty-five cents tax and the affixing of the tags.

Acting in strict conformity with the statute, the board of agriculture could collect the fertilizer tax, *without going to the expense of a single inspection or analysis.* If this be so, is it not plain that the tonnage tax law is a revenue measure, and that the declaration in the first sentence of section 2190, that the tax is laid for "the purpose of defraying the expenses connected with the inspection of fertilizers," the only reference to *inspection* in the act, is the shallowest pretence? The real and only purpose of the law is to *collect the tax*, and to exclude from the state all fertilizers, good or bad, which do not submit to the imposition. It is a tax "*for revenue only*," and not "*for protection.*"

The recent decision of this court in the case of *State* v. *McDonald*, where the South Carolina dispensary law was decided to be *not an inspection law*, is in point. (See former brief, p. 54.)

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